

**ZONING BOARD OF APPEALS  
MONDAY, APRIL 22, 2013**

Members Present: Mr. Darrow, Chairman, Mr. Parker, Mr. Moskov, Mr. Kilmer and Mr. Tamburrino

Staff Present: Mr. Fusco

**APPLICATIONS APPROVED:** 74 Orchard Street and 26 Silver Street

**APPLICATIONS DENIED:** 39-39 ½ Seymour Street

**APPLICATIONS TABLED:** None

Mr. Darrow: Good evening. Welcome to the City of Auburn Zoning Board of Appeals. I'm Board Chairman Ed Darrow. Tonight we will be hearing 39-39 ½ Seymour Street, 74 Orchard Street, 26 Silver Street.

I would ask that if you have cell phones that you either put them in manner mode or turn them off please.

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**39-39 ½ Seymour Street –Area variance to convert structure to a 3-unit dwelling.**

Mr. Darrow: 39-39 ½ Seymour Street, could you approach the podium please.

Mr. Pettigrass: Thank you, I'm Joe Pettigrass, I'm here for DBJ Development which is JB Sales Akron, they're both...

Mr. Darrow: Could you pull the microphone a little closer to you? Thank you.

Mr. Pettigrass: I'm Joe Pettigrass, I'm here on behalf of DBJ Development, LLC which is J&B Sales of Akron, they're both here, present also. We did submit a variance request asking for three area variances, one herein. This property was purchased by my clients from the City at auction. Historically it's been three units. It's...when it was sold to them it was either a single-family or a two-unit to my client. We're looking for a variance so that they can continue to use the property as a three-unit which historically it had been on Seymour Street. It was already set up as a three-unit prior to buying it. They have not done, other than some exterior work improving the outside landscaping the property, they've not done any work. They're seeking tonight a variance...for a request a variance for a three-unit multi-family in an R1A zone, establishing a new lot size in regards to the lot that is needed and for a variance for a three-unit and push forward to receive a variance in regards to that. And the third one has to do with parking. Currently it's laid out to four to seven bedrooms with this house. The property, like I said, was already divided up when my client purchased it. On the street facing the property on the left-hand side, there was a unit there, upstairs and downstairs, it currently has four bedrooms. On the right-hand side there's two units and I'm sorry for the little confusion, I was a little confused myself, and there's a unit that they had downstairs that is one-bedroom and upstairs is two bedrooms. This is on the right-hand side of the property. It was when my client purchased it from the City through auction. It had already been split up. It has three gas meter, three electric meters and everything else and that's the way it was

split up. It's a total of seven bedrooms thus requiring from the City for seven parking spaces. In the rear of the property there is a three-car garage that is existing to the property thereby making four additional parking spaces.

We did amend our application and I apologize for the lateness of it. We did submit some papers at the counter last week and I know the Codes has some limited hours now so I called after that. If the Board has any questions, I'll try to explain it but essentially in order to try to reduce down the request for parking spaces, as I said, currently its laid out as 7 bedrooms and there's a three-car garage in back thus requiring four additional spaces. We would propose as part of the amended papers as submitted, we are proposing keeping the bedroom count at six so that on the one unit that's on the property is tied to the property, the upstairs and downstairs has four bedrooms, we propose reducing that down to three bedrooms. It's currently laid out where there is a bedroom downstairs and three bedrooms upstairs in that particular unit. We were proposing moving the bedroom that's downstairs and have all the downstairs in that particular unit just being a family room, living room, dining room, kitchen and then upstairs would remain the three bedrooms. On the right-hand side, which is divided between upstairs and downstairs in the unit, as they're laid out right now as two separate units, we propose keeping it the same with the downstairs remaining a single one-bedroom unit and the upstairs would be remain a two-bedroom unit thus there would be a total of six bedrooms and only require six parking spaces. We would also then, as part of that amendment that part of leveraging the sketch, we propose adding two parking spaces in the rear. There is additional space to the side of the garage and from talking to Mr. Hicks, it's my understanding that the Code requires 9 foot wide by 18 ½ foot deep parking space. There is enough area there to put in two additional parking spaces with those dimensions. And so, as part of our amendment to our application, we would seek to basically have five existing parking spaces and reduce the bedrooms down to six. Thus, we're one short of one parking space instead of four parking spaces. We would hope that makes it a little easier in regards to the Board hears as far as our request.

Mr. Darrow:       Okay.   Are there any questions from the Board members?

Mr. Tamburrino: I just have one question. How long has the property been a three-unit? Tell of the history of this property.

Mr. Pettigrass: I don't know if Mr. Hicks has that, I just know from my clients, they tell that when they purchased it that it had already been instead of as is three units, the previous owners which I from my understanding, they lost it to tax foreclosure to the City. My clients tell me that it appears it's been that way for at least 10 to 20 years. I'm not exactly sure how far back it goes, I don't...goes back 30, 40, 50 years but it's nothing to my understanding from my clients but that if anything that was recently done prior to the tax foreclosure.

Mr. Tamburrino: Could you describe the property again, I'd just like...just to...

Mr. Pettigrass: I can. Again, I'm sorry presenting...

Mr. Tamburrino: No that's okay, I'm just trying to understand the apartments...on the right-hand side...I'm just trying to confirm it's the right-hand side there's two apartment units there's one bedroom down is that correct?

Mr. Pettigrass: That is correct. Upstairs is a two-bedroom unit, downstairs is a one-bedroom unit.

Mr. Tamburrino: And on the left-hand side of the house?

Mr. Pettigrass: On the left-hand side is upstairs, downstairs all one unit and it currently has but we propose to change it. It currently has one bedroom downstairs and three bedrooms upstairs but the existing four bedrooms but like I said, we'd like to change that so it's just the three bedrooms upstairs and eliminate the one bedroom downstairs.

Mr. Darrow: Mr. Pettigrass, there are several letters attached in favor of this project. Under the signature it says "owner or tenant". Can you tell me how many of those signatures are actually the owners?

Mr. Pettigrass: I'm not sure, I know a few of them are tenants, I know that...I know that 50 Seymour Street that those are...I know that Carol Palsy there is a tenant and not the owner. I'm unsure. Mr. Baker told me that he believes about half of these are tenants and the other half are...

Mr. Darrow: Okay, thank you. Yes Doug...

Mr. Parker: These proposed parking areas at the rear of the house for...listed as four and five currently where are they? Is it a grassy area right now?

Mr. Pettigrass: It is.

Mr. Parker: What kind of an area is going to be provided for those cars? If we agree to this, are they going to be paved or...?

Mr. Pettigrass: We would pave them.

Mr. Parker: Pave it? So there would be an area there for the cars to into that.

Mr. Tamburrino: Just curious, one question. I don't see anything from 41 Seymour Street or 37 Seymour Street, the neighbors right next door...any letters?

Mr. Pettigrass: I know that one of the tenants there when my client had gone out two or three different days, wasn't present and I know that with one of the other properties, I'm not sure which one is vacant. I think it was the one to the right of the property? It would be 41. I'm not sure, I know the building happens to be vacant to the right...that would be 37. Would it be 37?

Mr. Tamburrino: Thirty-seven, correct. What about 41?

Mr. Pettigrass: That was the one where the owner wasn't there at the time when my client went around.

Mr. Darrow: Mr. Pettigrass, when your clients purchased this property, you said it was at auction, were they aware at the time it could not be used as a three-unit as is?

Mr. Pettigrass: I believe that's probably the case. I believe that...I know they were first looking at it and nothing proposed upon and the real estate agent had presented it as a three-unit. But I think at some point in time, either before or after the auction there they became aware from the City that it was not being transferred as a three-unit. However, they were understanding that they would make a use application to the City which I believe they made a use conversion application. It was certainly their hope, even when they initially bought it that it was set up as a three-unit, that they would hopefully be able to continue it.

Mr. Kilmer: Mr. Pettigrass, do you know how long it's been since it was used as a three-unit complex?

Mr. Pettigrass: My guess is it was being used prior to foreclosed for back taxes. The City took it. I'm not sure exactly how long it took the City to foreclose on it. I'm assuming it wasn't years, I'm assuming it was a relatively short time period as far as real estate terms are concerned. I don't have an exact...

Mr. Darrow: Excuse me, Mr. Hicks do you have any idea the last time it was a legal three-unit?

Mr. Hicks: I have that documentation downstairs. I do not have it in any of your packets.

Mr. Darrow: Okay. Any other questions from the Board members?

Mr. Fusco: I do have one question and I don't know how this applies to the amendment that Mr. Pettigrass has submitted but on our application we're being asked for a 40% lot size variance, 10,000 feet down to 6,000 feet in round number. Mr. Pettigrass, when your client was asked to explain why 40% is not substantial in question 15 of his application, your client wrote "first and foremost the major character and quality and safety of my neighbors and neighborhood

in general would not be adversely affected by the granting of the requested area variance to allow for a legal three-unit house". Now that was in response to the question "why is 40% not substantial". I don't understand that answer.

Mr. Pettigrass: Well, I think that pertains to all three of the variances pretty much. It's not just the area but it's also new parking and also the three-units Part 1A. So I think it was a general...it regards to all three not necessarily just the area requirement. But I think in general what my client's trying to convey is that the character of that neighborhood that is pretty much at least 50/50 as far current rental properties and owner-occupied and so I think that's where they're talking about character falling sort of safety that will pertain to if we had six bedrooms and we've got five additional parking spaces at most we'd be seeking space for our safety. There's approximately 40 some odd feet directly in front of this property for off-street parking. It would...and I know this doesn't really come into play but more than likely we'd probably need to use five parking spaces a month...or six parking spaces, I should say because more than likely the one bedroom that we rent out there's probably going to be a single individual living there. So more than likely the five parking space if the Codes probably...and I know we have to ask for six because of the six bedrooms, more than likely the reality of the situation is that we're probably going to contain all the parking spaces that we need on the property itself and I think that that lends to the safety. There's not going to be cars needing to park in the street causing congestion or other traffic issues. I don't think it was...as far as the 40% was meant that answer wasn't meant to pertain specifically to that but just in the general of all three variances.

Mr. Fusco: What are your thoughts regarding the 40% variances, substantial or insubstantial?

Mr. Pettigrass: Well I think in regards to this neighborhood, it's an older neighborhood here in the City of Auburn, it's not a newer neighborhood and these properties were built without having a large amount of square footage. I think that's pretty characteristic of some of the older neighborhoods. You get into any of these older neighborhoods, you're going to be faced with the fact that you're just not going to have the square footage requirements. Some of these

lots that I've done transactions on before, I've even seen...I've got one right now where it's a 66 foot City lot that they split into two, they've got two houses on 33 feet each and there's a house in the rear and I was just doing a real estate transaction, separate and apart from my clients, some other clients, but it's not uncharacteristic in the City of Auburn here. So with this property at least I think it is more in character, like I said and I'm sorry I don't have specific dates but in regards to your question in regards to how long ago was it a three-unit. I don't want to give the impression that I think it was years ago either that the City did foreclose on that. I think that up until relatively the recent past it was being used as a three-unit and like I said, my clients have already started to clean up the property as far as the exterior of the property, removing some trees, trying to give better curb appeal to the property and everything else which hopefully and at least the neighbors that they've talked to seem to very much appreciate the effort in trying to clean up the property.

Mr. Kilmer: I have a comment/question. On the application it says that this property is now allowed for a two-unit the way it was constructed. What your client seems to indicate on his application that if he can't convert it to a three it has to go back to a single-family home which according to the verbiage on the application as I've gone through it, it's entitled to be a two-unit but not a three. Am I assuming that correctly?

Mr. Darrow: I'm sorry, could you...?

Mr. Kilmer: On the application it says that this structure is now allowed for a two-unit but if you read into his application it says well if I can't have the three it's got to back to a single-family residence. Well that's not true. If he's assuming either it's a three-unit or a single-family but it's...

Mr. Darrow: R1A allows for a two unit.

Mr. Kilmer: So it could be, if it's approved, it could be three or it could be a single or it could be two. He's not necessarily backed into a corner tearing it back to a single.

Mr. Darrow: That is correct. It could be a two in an R1A. I have one question Mr. Pettigrass. Looking through the packet, I don't see any documentation where it shows this project for them would not work as a two-unit, that it has to be a three-unit to be a viable venture.

Mr. Pettigrass: Well, I guess that it just goes as far as the dollars are concerned, they would like to spend a significant amount of money upgrading this property. It makes more sense to them as far as expenditures of money if it was a three-unit just because they can get more return. If it is a two-unit, the reality for better or for worse is they're probably not going to put as much money into it because they're just not going to be able to get as much of a return. So they would like to put more money in which ultimately would benefit the City, I assume the City would be more than happy to raise their assessment and things of that nature but as a two-unit, we would put some figures in there, as a two-unit their rental income obviously is reduced compared to the three-unit.

Mr. Darrow: So is it fair to say as a two-unit it would still generate positive cash flow or would it be in a negative?

Mr. Pettigrass: Well, it might...it would probably generate money but only because they're not going to put as much money into the property. So, the property will generate money but it's going to reduce down the investment and the upgrades to the property. They're just simply not going to put as much money into the property and consequently they will take less money back as far as tax return and assessment.

Mr. Darrow: Okay. Any other questions from Board members? You may be seated Mr. Pettigrass. We may recall you. Is there anybody else present wishing to speak for or against this application? Please come forward sir. Can you give your name and address for the record?

Mr. Thurston: Yes, my name is Thomas Thurston. I live at 41 Seymour Street.

Mr. Darrow: Your last name is Thurston sir? Could you pull the microphone a little closer to you? Thank you.

Mr. Thurston: I'm against the...not making it into a three-unit. It's just...I feel that it's going to add more congestion to the neighborhood. We already have around roughly about 50/50 margin just in the eight housing in my lot area. There is not really much parking. They obviously have a three-car garage out back, a small yard. If they make them into parking spots but then there's no yard for anybody that lives in the house. I've know Miles for three...about five years. It's been outdated all five years that I owned it. I'm appreciative that they bought the house, they purchased it, they've done a lot of nice work to it. They've made the curb appeal a lot better. I just...I don't know if it's really going to be helpful for the City...it is a three-unit house because it's going appreciate my property value. So I've already got a multi-unit on the side...if you're looking at my house, the left side, a multi-unit on the right side of my property and I have a multi-unit across the street from mine.

Mr. Darrow: When you say multi-unit, how many units are in each of them? Is it two, three, five?

Mr. Thurston: A two-unit on the left side of me, two-unit across from me and then their proposed three-unit next to me. And then just down the street there's I think a six-unit apartment housing, down the other side of Holly Street.

Mr. Darrow: Do the Board members have any questions?

Mr. Tamburrino: I'd like to confirm your address again Mr. Thurston, it is?

Mr. Thurston: It's 41 Seymour.

Mr. Tamburrino: 41 Seymour. Thank you.

Mr. Moskov: Mr. Thurston, when you said there's a 50/50 margin, I think...what were you referring to?

Mr. Thurston: There is eight houses between Fulton Street and Holly Street on both sides, four and four or ultimately there's five, I think it's five and five. There's four multi-units now between Fulton Street and Holly Street.

Mr. Kilmer: So you're comparing single residences to...

Mr. Thurston: Single residence to multi-family housing.

Mr. Kilmer: Got ya. Thank you.

Mr. Darrow: Any other questions? You may be seated sir. Thank you. Is there anybody else wishing to speak for or against this application? Anybody else wishing to speak for or against this application? Hearing none and seeing none I shall close the public portion so we can discuss it amongst ourselves. Thoughts? Concerns?

Mr. Tamburrino: I like the...they're doing a nice job on the house but my concern is it's a distressed neighborhood. We're working with population densities increase. That's my biggest concern.

Mr. Moscov: No doubt...I'm little confused here...I guess it's a two-unit house, there's nothing in about what was the cost be or what were the plans...is it a two-unit or is it three to one. That's it. I'm sure there's still some positive benefit for a two.

Mr. Kilmer: I would like to say that their house looks nice. I like the color and it looks like it was attended to recently. My concern is that I don't think the financial hardship portion has been proven from two to three.

Mr. Darrow: Well on this, the financial hardship is in exacting. It's not a factor that automatically meets...no. Because it's an area not a use.

Mr. Kilmer: The other thing is, I'm a little concerned and I don't know if you could prove it one way or the other but I'm afraid that we might be rubber stamping a three-unit that was put in years ago without the proper authority to put in a three-unit...it kind of looks like it might

have been crammed in there way back when. I don't know if you could prove that or not so we might be rubber stamping something that was not appropriate all along and 40% is a big chunk.

Mr. Tamburrino: If you think what the City plans, the plan talks about the reduction of this type of apartment split.

Mr. Darrow: Is there...if there was more information hence a two-unit comparison to three-unit may be when the last it was used as a three-unit, would any of these help if we tabled and asked for it or do you wish to just move forward with it as presented? Or any of those sticking points? Is it something you'd like to see?

Mr. Tamburrino: I'm also concerned maybe the applicant is under the understanding that it has to go back to a single... in his paperwork it kind of alleges to the fact that he thought it had to go back to a single-family.

Mr. Parker: If the vote is not in his favor this evening with the Board, does he have to reapply for a two-family? Is that what...

Mr. Darrow: No, a two-family is allowed under a 1A but he only could reapply to this Board if there was a substantial change in his application. We can't hear something twice unless there's been a substantial change.

Mr. Kilmer: Could I ask the applicant a question?

Mr. Darrow: Sure, his attorney?

Mr. Kilmer: Well, his attorney.

Mr. Darrow: Mr. Pettigrass, could you please reapproach?

Mr. Kilmer: Is your client under the impression that it has to go back to a single-family unit because this is the way it's worded in the application and it would be too difficult for him to convert it back to a single-family residence when in fact it would be approved for a two-unit.

Mr. Pettigrass: I think he had a little confusion himself on what use he's allowed to use it as. I do understand that it could be used as a two-unit. I also understand, just from what was in your comment, I do understand the City is trying to have less units and everything but I also understand the financial aspect of it too. He's also trying to generate money and I know the kind of return...the sort of issues. In regards to Mr. Thurston here, the neighborhood, and I don't know how long ago he purchased this property, but the neighborhood didn't just recently change into multi-units. The other reality is my clients are allowed to use as a two-unit. One of the results is if it remains on the one side a four bedroom, you're going to have a larger family living there and I actually think the net result is probably worse for the next door neighbor by having a larger family live with more kids as opposed to if you've got a smaller unit in there as far as bedrooms are concerned, you're going to probably have less kids living there. And on the other side with a one-bedroom and a two-bedroom, where they talked putting just adults living on the other side, I'm not sure as far as the impact. It isn't like with a one-bedroom more than one vehicle, it's going to be a single individual living there and a two-bedroom might be a couple, it might be a couple with...it could be a single mother with a child, it's not going to be...in some of these older houses and they had four or five or six bedrooms and they had actually more people living there as opposed to reducing things down and have smaller bedrooms per unit. That's one of the things my clients have told me is that they take out a bedroom here they do some of these things, it allows them to generate more money just because of the number of units. It would also potentially reduce down the number of people actually living there which might actually help the neighborhood. That sort of logic make sense.

Mr. Kilmer: Thank you.

Mr. Darrow: Any other discussion?

Mr. Pettigrass: Just to be of more help, we'd be happy to provide more financial information if they want.

Mr. Darrow: Does that matter.

Mr. Tamburrino: I don't think the financial matters, it's an area variance. It doesn't really apply.

Mr. Darrow: No, it doesn't...it's not a killer.

Mr. Tamburrino: No. I'm just thinking about quality of the neighborhood. That's my major concern.

Mr. Darrow: Okay. The Chair will accept a motion.

Mr. Tamburrino: I'd like to make a motion that we grant DBJ Developments, LLC of 132 Genesee Street three area variances, one area variance for a third unit in an R1A zone. Two, an area variance for conversion of lot size to 4,091.2 square of the required 10,200 square feet. Three, an area variance of four parking spaces, actually it's amended to five, I think it is, five parking spaces of the required seven.

Mr. Darrow: We have a motion, do I have a second?

Mr. Moscov: Second.

Mr. Darrow: Roll call please?

**VOTING IN FAVOR:** Mr. Parker and Mr. Moskov.

**VOTING NOT IN FAVOR:** Mr. Kilmer, Mr. Tamburrino and Mr. Darrow.

Mr. Darrow: I feel we're going to cause more congestion in the neighborhood and it can be a viable project as a two-family being that it's in a R1A. So I'm sorry but your area variances have been declined

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**74 Orchard Street – Area variance 1,510 square feet in lot size for the addition of two apartments.**

Mr. Darrow: Next we have 74 Orchard Street. Could you please give your name for the record and address and tell us what you'd like to do.

Ms. Reilly: My name is Jackie Reilly and my address is 31 Elizabeth Street in Auburn. What we...we purchased the property at 74 Orchard Street two years ago at a foreclosure and we purchased it...it was a former bar and along side it was a double house. We've done a lot of improvements as far as painting the front of the bar trying to make it look presentable. We have...we renovated both apartments, put a new roof on of the bar and the building and have consulted with Mike Pulmary and blueprints for converting the bar to a two-unit...two two-unit apartments approximately 1,000 feet each but we're short about 1,510 square feet on our property as far as the Code requirements for a four-unit. So, that's what we're applying is an area variance for that 1,510 square feet to allow us to put two additional units on that property. There's more than enough parking since there's a parking lot for the bar. Like I said, Mike Palmary designed two very nice two-bedroom apartments and we actually are going to have people who are looking to rent these apartments, we have people calling us all the time because we have very nice apartments, our rent is very fair and they say that it's very difficult to find good, clean...The apartments on Orchard Street were very easy to rent and Orchard Street kind of has a stigma but because our apartments are so nice, people that hasn't bothered them. I think we...my tenants are great. The one downstairs is a...he works as a supervisor at Tessey Plastics, works different shifts, he's by himself...may have a girlfriend there occasionally, his dog. And then my tenants upstairs, Jake Maleneck, he works for the School District and his girlfriend and they're pretty quiet. So, we have a good reputation as far as converting...we also do the same with the foreclosed house on Wallace Ave.

Mr. Darrow: Are there any questions from the Board members for the applicant?

Mr. Tamburrino: I have a question...on the façade of the bar, what's your plans to do that.

Ms. Reilly: I will have that sign gone. Somebody wants it and I told him you can have it. I wanted it gone but unfortunately, there's electrical involved and so if I take it down it's kind of...I know we would much rather give it to somebody who can use it rather than taking it down and throwing it in a dumpster. But the façade of the bar will have new windows because the ones that are there aren't operable. Although they're very nice windows, they actually don't open so we have to replace them. And then...

Mr. Tamburrino: Excuse, I guess I understand you saying that unless you find somebody who can actually take the sign, you're going to leave it up there?

Ms. Reilly: No, no, no, no. It'll go but I'm trying...there's a reason it hasn't gone is because I've tried to...we've also been selling the bar, the actual...it's a beautiful bar. Right now anybody who makes an offer I told them because I hate to throw it out. It's got a corrugated top...

Mr. Tamburrino: So you're going to actually do their plans are to give the sign and the bar gone before you do the apartment.

Ms. Reilly: Yes. I'm just trying to...and if somebody can use it, I'd rather...I think just telling them to throw it out, but I will if I have to. I don't want to have a problem with that.

Mr. Fusco: You mentioned that you brought this to the attention of your neighbors and some that you were able to get a hold of and some that you weren't, are they in favor or are they against?

Ms. Reilly: Otherwise a few more could have been here and I'm not sure where they stand on it. When we bought the property it was always something we had said we were going to do is convert it to apartments and everybody that I've talked to...because as I've been there cleaning it out people constantly stop, are you opening the bar?...no, apartments. They've been glad to see that we've cleaned it

up and painted the front of it and we have nice tenants. The tenants that were in there when we purchased it were not the best tenants, we had to evict both of them. They had old furniture and falling down porches. We cleaned all that up and it's very clean. Everybody has been that I've spoken to has been receptive. Like I said, I'm not sure.

Mr. Darrow: Any other question from the Board members?

Mr. Kilmer: I just have one. Jackie, in front of the building it's paved right now. Is it supposed to be connecting the sidewalk. Is that going to come out and put into green space?

Ms. Reilly: No, if it had to, if it has to it will.

Mr. Kilmer: I'm just asking.

Ms. Reilly: If it has to it will. I know down the side it's blacktop and we did, we were going to remove all of that or the sidewalk maybe. But all that was going to come out in that section, just kind of for more...

Mr. Kilmer: The white clapboard house, is it attached to the building, are they connected on the inside?

Ms. Reilly: No. There's a courtyard about this wide but...

Mr. Tamburrino: Two separate properties.

Ms. Reilly: Yes. We call them courtyards, more of a joke.

Mr. Darrow: Any other questions from Board members? You may be seated ma'am. Thank you.

Is there anyone present wishing to speak for or against this applicant? Please come forward. If you could give your name and address for the record.

Mr. Boyce: We're Morgan and Mildred Boyce, or Em Boyce and we live right next door at 76 Orchard Street. We have a lot of questions.

Mr. Darrow: Let's hear them.

Mr. Boyce: What is...we were under the impression with the City, as far as multiple units, and all of this...the zoning here is R2, but multiple units not owner-occupied we're concerned about. I know that a lot of new homes are built on the street with the understanding that those are all going to be sold owner-occupancies. Is this true or not? All the new buildings that are being build on Orchard Street...

Mr. Darrow: I'm not aware whether they're going to be sold as owner-occupied or not.

Mr. Boyce: Oh.

Mr. Tamburrino: I don't know. I've heard that they will but I...

Mr. Darrow: Brian, do you know?

Mr. Hicks: My understanding is that it's under a housing management firm for a period of time and after that period of time lapses, they may be sold but I don't believe that they can be sold for at least 10 to 15 years.

Mr. Boyce: Okay. So, the other thing that we're concerned about is exits.

Mr. Darrow: Is what sir?

Mr. Boyce: Are the exits and entrances of the property...they'll be two new apartments supposedly going in. Where are they going to be? Are they going on the north side, south side, west side? They can't be on the east side because the house is there.

Mr. Darrow: It appears to me that one will be on the front and one will be on the east side.

Mr. Boyce: On the east side?

Mr. Darrow: Yes, am I correct in that? You know what we could do? Are there any other questions because then I can have her come back up and address them? That's it? Okay. Thank you.

Mr. Boyce: Thank you.

Mr. Darrow: Could you please reapproach? Could you explain where the entrances are going to be for your apartments?

Ms. Reilly: The apartment one right in the front.

Mr. Darrow: Okay.

Ms. Reilly: You can see...in the rear apartment, the entrance to the rear apartment will be in back into the parking lot that's existing.

Mr. Darrow: Okay, so...

Ms. Reilly: The door that is closest to Morgan and Em's house was formerly an emergency exit to the bar, will be closed off and that area will be actually a bedroom, so it won't have an exit there. It' will have an egress window but not an exit.

Mr. Darrow: Okay.

Ms. Reilly: It will go into the parking it's not...we're trying to be as considerate as we can to have everybody's rights...turning what used to be an eyesore something very useful.

Mr. Darrow: Okay, thank you. I have a question for Mr. and Mrs. Boyce. Hearing this, does this have you in favor of it? Not in favor of it? Or really neutral?

Mr. Boyce: We're...

Mr. Darrow: Please come back.

Mr. Boyce: We're...

Mr. Darrow: Could you give your name again for the record?

Mr. Boyce: Morgan Boyce. We live at 77 Orchard Street. We're under the impression that they got a variance or an okay to put in a garage on the back of the property. I was wondering if they were doing this or not?

Mr. Darrow: Sir...

Mr. Boyce: See what they're doing is they're using the property as far as storing all their construction equipment. Is that still going to be there.

Ms. Reilly: No.

Mr. Darrow: Hold on now. You address the Board. Yes sir.

Mr. Boyce: So, both of the things that I wanted to have I forgot to ask for.

Mr. Darrow: No problem. All right, thank you.

Mr. Boyce: Thank you.

Mr. Darrow: If you could please come back up.

Ms. Reilly: The garage that we got the variance for, we did not build a garage, it's hard to find an area for that because it expired...this was more a priority and also our house burned down in the meantime and that kind of put a damper on things as well. As far as the construction stuff being there, it's more because we've been trying to use, clean out...they left, it wasn't great so we're trying to clean that stuff out.

Mr. Darrow: So it is not going to be...that back is not going to be storage for any of the construction equipment once this project is finished and if you should be so granted the variance your apartments are completed.

Ms. Reilly: No. We may have like our snowplows there but we use the plow...we have the plow because of the parking lot, that

would there as...we occasionally will park our truck there but as far as...no.

Mr. Tamburrino: So this storage are here, in your plan...your plot plan, what exactly...what are your plans for that storage area?

Ms. Reilly: That we would...the two units is a priority. We would like to build now just a one-bay garage, later on, but it's not anything that...

Mr. Tamburrino: Yah but this storage, is this an existing?

Ms. Reilly: That's just existing part of the building.

Mr. Tamburrino: Okay, what are you storing there now?

Mr. Reilly: There's nothing there right now. We actually I think...Brian Saxton was thinking of making part of that the utility room at the apartments.

Mr. Darrow: So that was the storage from when it was a bar?

Ms. Reilly: Yes, the DJ room was back there...all that stuff.

Mr. Darrow: Right. Okay. Because this...

Ms. Reilly: And part of the kitchen might call storage in his drawing as well.

Mr. Darrow: Okay.

Ms. Reilly: Because we won't be utilizing the whole kitchen. The two apartments go about to where...I'm not all that familiar with...about to where the kitchen and the DJ area was. All that back there is not part of the two units. In case we decide to build a garage or something later or if the tenants want storage because there's not really a useable cellar, I mean there is but I wouldn't store down there.

Mr. Tamburrino: One more question. The storage, is that the doors to the storage area are they garage doors or just...?

Ms. Reilly: No, there's just a regular door.

Mr. Tamburrino: Okay, got ya, thank you.

Mr. Darrow: Any other questions? You may be seated. Thank you. Is there anybody else wishing to speak for or against this application? Is there anybody else present wishing to speak for or against this application? Seeing none and hearing none, I shall close the public portion. Thoughts?

Mr. Tamburrino: My thoughts are we have a bar, I see improvement. They're transforming a bar into two apartments.

Mr. Kilmer: It's not a huge area variance...it's a little bit more than 10% which I don't think is that that big.

Mr. Darrow: Yeah. My biggest concern are the neighbors. Is it...what's it going to do to the character to the neighborhood? I got to believe not being a bar is probably been one of the best improvements for the character of the neighborhood. The Boyce's don't seem to be opposed if everything is done properly and they're not intruded on their property. Any other thoughts?

Mr. Moscov: No, that's an overall improvement.

Mr. Darrow: Okay. The Chair will accept a motion.

Mr. Kilmer: I'd like to make a motion to grant Timothy Reilly of 31 Elizabeth Street an area variance at 74 Orchard Street of 1,510 square feet of the required 12,400 square feet lot size for the conversion and addition of two apartments.

Mr. Tamburrino: Second.

Mr. Darrow: We have a motion and a second. Roll call please.

**VOTING IN FAVOR:** Mr. Parker, Mr. Moskov, Mr. Kilmer, Mr. Tamburrino and Mr. Darrow.

Mr. Darrow: Congratulations, your variance has been approved. See Code Enforcement for needed permits. Thank you.

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**26 Silver Street – Area variance for the construction of a 16x24 addition.**

Mr. Darrow: 26 Silver Street. Would you please approach, give your name and address and tell us what you'd like to do sir.

Mr. Boyd: Thank you. Good evening. My name is Bill Boyd, I'm a builder from Union Springs. I live at 16 Scoby Street, Union Springs. I'm working with Mr. and Mrs. Wilson where they asked me...Mr. Wilson asked me if I would make a presentation tonight...there's not much to say.

We're seeking an area variance, it's approximately eight square feet to construct a 16x24 addition to the end of their home on Silver Avenue. The...as you can see from the picture, it's an oddly-shaped corner lot and one corner of the proposed addition would extend over the setback line approximately five feet by six feet. I asked my client to use his trigonometry skills to calculate the approximate square area and I believe it came to just over 8 square feet of the proposed addition would extend over the setback. Mr. and Mrs. Wilson asked for the addition...Mr. and Mrs. Wilson have a very small house. It's only approximately 960 square feet of living space. There is a breezeway and a garage but the house is very tiny. We put in the application that the current dining room and the kitchen are only 7 feet 6 inches wide which of course is almost that area between the two tables there. They have grandchildren now and they're asking for the variance to extend the house to accommodate their family gatherings and provide more space for the grandchildren. They kind of feel that they might wise to relocate but they don't want to do that. Mr. Wilson is a pastor of a church here in the City and their home is currently paid for and they don't want to incur the cost of purchasing somewhere else or relocation expenses. That's potentially the extent of our application.

Mr. Darrow: Thank you sir. Are there any questions?

Mr. Tamburrino: Yeah. I hate to be a nitpicker because I'm an engineer. Their drawing here...this is 2 foot 11 inches and this is 5 foot...these are reversed. These dimensions are reversed.

Mr. Boyd: They have to be. That was my mistake and I'm sorry...I wish I was the engineer, I just paid for \$100,000 for to go to school and I made an error here but I think the square footage should be about right...

Mr. Tamburrino: It's fine.

Mr. Darrow: Any other questions from the members?

Mr. Boyd: May I ask Paster Wilson if he wants to say anything...to add anything?

Mr. Wilson: Well basically...

Mr. Darrow: Sir, I'm going to need you to approach, give your name and your address.

Mr. Wilson: Yes my name is Reverend Robert Wilson, I live at 26 Silver Ave and I've been there since '87 and have six grandchildren now. Our children are constantly coming home with them. It's sad to entertain because your grandchildren and family is like sardines. I have the...I own the property next to my house and when the weather's nice and sunny I can always go outside. My wife, she's been on me about buying another home so I told her I prefer just going off the side and just adding to what I have. I don't believe we have to swing what I have to go through, I don't really think it's a lot that we have a garage going into but I would just appreciate just all this space. Once I have my family over we won't be on one another's lap.

Mr. Darrow: Thank you sir.

Mr. Wilson: Thank you.

Mr. Darrow: Is there anybody present wishing to speak for or against this application? Anyone present wishing to speak for or

against this application? Hearing none, seeing none I shall close the public portion so we can discuss it amongst ourselves. Personally, I truly believe this is one where it is the minimal amount of area variance needed.

Mr. Tamburrino: This is it. Number one, this property is immaculate. It's a very, very nice property. I'm been...actually walked my dog that way and yeah, what he's asking for is just a minimal amount that I...

Mr. Darrow: Yah, I feel so as well.

Mr. Kilmer: The way that Silver Ave approaches Osborne and connects onto it, you've got a sharp enough angle where it's not going to impact your vision at all when you look to left of Osborne, I don't think.

Mr. Darrow: Okay. Any other discussion? Chair will accept a motion.

Mr. Kilmer: I'd like to make a motion to grant Robert and Verna Wilson of 26 Silver Ave and area variance of 5 foot 6 inches of the required 12 foot 6 inches for the addition on the secondary front yard of sideyard corner lot. This will allow the applicant to construct an addition of 16 foot by 24...should be feet I believe...yeah feet, it says inches on the east side of the structure.

Mr. Darrow: Excuse me, what's that Brian.

Mr. Hicks: Those figures need to be reversed.

Mr. Tamburrino: It should be 24 by 16.

Mr. Kilmer: 24 by 16 of the required area variance...

Mr. Darrow: Five six...

Mr. Kilmer: for the 2 11....

Mr. Darrow: Area variance is 5 foot 6 inches of the required 12 foot 6 inches.

Mr. Boyd: It's on the application but on the drawing where it's calculated out, where the figures are reversed.

Mr. Tamburrino: This is the size of it. This is reversed...

Mr. Darrow: Just where it was marked.

Mr. Kilmer: Where the depth, actually Mr. Boyd 5 6 would be right.

Mr. Tamburrino: This 2 foot 11, you're right. It's got to be because this triangle and this ratio is not right.

Mr. Darrow: Yeah, so it's just those two on the plot plan are reversed.

Mr. Tamburrino: Yeah.

Mr. Darrow: Where it says 5 6 it should say 2 11, where it says 2 11 it should say 5 six.

Mr. Tamburrino: Those dimensions are to be reversed.

Mr. Darrow: That's the only thing. We have a motion, did we have a second?

Mr. Moscov: Second.

Mr. Darrow: We have a second, Mr. Moscov. Roll call please.

**VOTING IN FAVOR:** Mr. Parker, Mr. Moskov, Mr. Kilmer, Mr. Tamburrino and Mr. Darrow.

Mr. Darrow: Congratulations, your variance has been approved. Please see Codes for all your needed permits.

Mr. Darrow: Don't pack up yet gentlemen.

Are there any additions, corrections or deletions to the December minutes? None. May they stand approved then. Show a motion that it's from December approved.

Yes sir?

Mr. Fusco: In the way of housekeeping, some of these handouts from...

Mr. Darrow: You're free to leave if you like. Thank you very much.

Mr. Fusco: These all go together. We will be getting the 108 South Street case back. I know we've gotten an adverse decision of the Supreme Court in Rochester which I've included, I would say it's for the record, we've gotten a decision out of the Supreme Court in Rochester which I've handed out which sends the matter back to us for reapplication on the ground that the original application was not specific enough as to exactly what use was being asked for. As you will recall, some of you will recall, that was a question that I had during the presentations, that was a question that at least one member of the Board who voted for it, she's not here tonight, had and that at least two members of the Board who voted against it had. They weren't really sure what it was they were voting for or against and the Judge agreed with that. But the uses articulated in the previous application of the Ministro Ministries were not specified. So, what I've included in your materials tonight is the decision itself, a portion of the reapplication, the face sheets of the reapplication, and then one of the addendums to the reapplication which is the list of uses that the Ministro Ministries will be asking for for a use variance when we reconvene next month. I'm told, second hand, that the application that's currently before us is not complete, that it was submitted to stay the proceedings. Under the City Code, when there is an application for a use or an area variance, it carried with it an automatic stay and the neighbors and that, as you'll all recall, are very concerned about this and so the applicant sought to stay the situation, maintain the status quo and get the application in as quickly as possible. As you will see when you read the decision, when you

take it with you, there I think were seven issues raised on the law suit, six of which were found in the applicant and our favor, one of which was found in our disfavor. The applicant has relied on a lot of the previous materials that in their application, whether that does or doesn't pass muster is a bridge we'll have to cross when we come to it. One of the things that I see lacking in the new application that we'll be dealing with next month is the State Environmental Quality Review, SEQR, paperwork. I'm going to insist that we do SEQR from scratch even though it was upheld by the Court...

Mr. Darrow: Short Form?

Mr. Fusco: Well, yeah, probably a Short Form but we'll see because it's an unlisted action. Because for nothing else, it looks to me that some of the uses that are now in Addendum B, the uses that they want approved on the property are things that I didn't hear the last time. Now I may have missed it, I try to keep an eye out for that. I certainly don't have a photographic memory. But in any event, because there may or may not be some uses that are new to the project that we'll be dealing with next month, I think it behooves us to start SEQR from scratch.

Mr. Tamburrino: The application has been changed, it's a new application, okay, they came back and they're more...I presume they are more specific on the uses of it.

Mr. Fusco: Right. Addendum B attempts to be more specific with what they want to do.

Mr. Tamburrino: Okay, when they come back, the process starts all over again either to approve or not approve their actual application.

Mr. Fusco: Correct. We're either going to approve or not approve and we will essentially start the process anew. We will take testimony from people who are in support and from people who opposed. It behooves us to do SEQR all over again. Anybody who wishes to speak out in favor of it or against it should have that opportunity.

Mr. Darrow: So it's back to square one.

Mr. Tamburrino: Yup.

Mr. Darrow: But, now they have to be specific or I should say more specific.

Mr. Kilmer: Andy, will there be more coming regarding this before next month or...

Mr. Fusco: Yeah. What I've done here, just to give you guys a heads up...the application came in too late to included on tonight's agenda. I wanted to, however, to give you a heads up. Some of you may have already heard. I'm sure some of the neighbors have been calling you or whatever saying "what's going on". So a) I wanted to give you a copy of the decision, b) give you at least the face pages of what Brian's office has received. And for my interests, most importantly Addendum B which is the list of the uses that they seek which I think should give us all something to think about, is this complete enough, is this something you want amplified, things along that line. Yes Rich.

Mr. Tamburrino: Andy, in the meantime between now...the variance is what, not granted? Where are they now?

Mr. Fusco: Yeah. The variance is not granted but he has the a ability to continue...they, Mike...

Mr. Tamburrino: Minisro Ministries can still carry on and do what they planned...

Mr. Fusco: They can carry on because the application carries with it a stay under the City Charter. When you apply for a variance, the status quo is preserved so presently this...

Mr. Tamburrino: They're not cleared by this unless a new decision comes. Right?

Mr. Fusco: What I'm saying is Ministro Ministries they're doing exactly what they want with their property at this point in time. Right? They can do until there is a new decision. Is that the way it works?

Mr. Fusco: They can do that until you five or you seven decide otherwise.

Mr. Tamburrino: Okay. Thank you.

Mr. Darrow: We're only hearing the one matter that didn't go in our favor from the Supreme Court? Is that correct?

Mr. Fusco: Well, they're going to have to...what I'm going to want to do is incorporate by reference all of the other testimony that we heard previously. So, for the sake of at least one if not two of our new members, I'm going to work up a packet so that we have all of the information that was adduced previously. Undoubtedly, you'll hear from a number of neighbors who are in favor...or excuse me, a number of neighbors who are opposed and a number of people who are in favor. The last time we did this it was...the last two times we did this it was very contentious. It promises to be that as well this time, I would assume.

Mr. Darrow: And both those minutes are available online for a complete reading.

Mr. Fusco: But what I'll work up a complete packet so that you all have it in front of you. It will be, I would think, much of the same. And...

Mr. Parker: You said we're probably going to read this next month?

Mr. Fusco: Yes. And the key to all of it is going to be Addendum B, the one's that got the paper clip. When you read the decision you'll see that every single other issue was found in the applicant and the Zoning Board of Appeals' favor with the sole exception of this B which is the uses. Now is this specific enough, is it not specific enough, those are the kind of questions that you're going to have to be dealing with and that we'll try to focus on. But, everybody's going to be able to free to talk about anything they want to talk about because it really is...

Mr. Darrow: It's related to the subject.

Mr. Fusco: Right. So they'll hear things that will be going over the same ground all over again and the public will, both those in favor and those in opposition have a right to do that, to revisit and relitigate that which has already been decided. But for the purposes of us, the five or the seven or whatever it was, given the fact that the decision when you read it, again, it's very specific on the one issue which is uses. I think that's where we kind of gotta keep our eye on the ball. Now, that's not to say that if any of you wish to go off on finding in favor or against on something that may have already been decided, that you're estopped from doing so. It's America, you can do what you want. But I think it behooves us to focus on the use issue, what are the uses, how specific are the uses, whatever the uses are that on Addendum B, are they consistent with the character of the neighborhood and things like that.

Mr. Kilmer: Andy, maybe I'm being dense but is this all of Addendum B or is there....

Mr. Fusco: That's all...that's what I...I quickly ran it off today. That's what I saw that was Addendum B.

Mr. Kilmer: There the mention of Addendum C and D.

Mr. Fusco: There are Addendums C and D as well...

Mr. Kilmer: This is just B here..

Mr. Fusco: B is what I think is going to be the nuts and bolts of the case.

Mr. Kilmer: Okay.

Mr. Darrow: Any questions? Anything else Andy?

Mr. Fusco: That's about it. If anybody has any questions in the meantime between now and then, give me a call. You all have my e-mail address, write me and I'll try to bring everybody up to speed who's not already there and here we go again.

Mr. Darrow: Motion we adjourn?

Mr. Kilmer: So moved.

Mr. Darrow: So ordered.